

Appln No. 09/370,601
Amdt date December 29, 2003
Reply to Office action of September 29, 2003

REMARKS/ARGUMENTS

Claims 2, 4-11, 13-16, 18-23, 48, 49, 51, 52, and 54-63 are pending. Applicant has cancelled, without prejudice, claims 3, 12, amended claims 2, 4-11, 13-16, 18-23, 48, 49, 51 and 52, and added new claims 60-63. The amendments find full support in the original specification, claims and drawings. In particular, the amendments find support in cancelled claims 3 and 12, as well as in the original specification, for example at page 3, lines 19 to 27; page 4, lines 17-23; and in FIGs. 2 and 3. No new matter is presented. In view of the above amendments and following remarks, Applicant respectfully submits that all of pending claims 2, 4-11, 13-16, 18-23, 48, 49, 51, 52, and 54-63 are in condition for allowance. Accordingly, Applicant respectfully requests favorable reconsideration and a timely indication of allowance.

In the Office action of September 29, 2003, the Examiner rejected claims 2-4, 6, 7, 12, 14-16, 18, 48, 49, 51, 52, and 54-59 under 35 U.S.C. § 102(e) as allegedly unpatentable over Desai (U.S. Patent No. 6,231,591). Applicant respectfully traverses this rejection.

Desai appears to disclose an apparatus for delivery of fluid to a localized portion of body tissue having a needle extending partially through the probe body. (See Column 19, lines 7 to 11, and FIG. 27). In contrast, as amended, independent claims 2 and 6 hereinabove are directed to a probe having an elongated ablation electrode or elongated tubular ablation electrode that extends the length of the elongated probe body and has an exposed distal portion that forms an angle

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α and a proximal end that is received in the handle housing. In addition, claims 2 and 6 recite the use of a sheath positioned on the elongated electrode to define the exposed distal portion.

Desai fails to disclose or teach an elongated probe body, or an elongated electrode that extends the length of the probe body and has a proximal end that is received in the handle housing. Desai also fails to disclose or teach any sheath over an elongated electrode to define an exposed distal portion. As expressly defined in its title, Desai is directed to "localized" fluid therapy and provides for a tip electrode 306 that is supported by a sleeve 344 and a support 356 (best seen in Fig. 25). There is no elongated ablation electrode that extends the length of the elongated probe body and has a proximal end that is received in the handle housing, nor is there a defined exposed distal portion of the elongated ablation electrode.

Therefore, Applicant submits that independent claims 2 and 6, as well as all claims depending therefrom, are allowable over Desai and Applicant respectfully requests that the rejection under section 102(e) be withdrawn.

The Examiner also rejected claims 8-11 and 19-23 under 35 U.S.C. § 103(a) as allegedly unpatentable over Desai, and claims 5 and 13 as allegedly unpatentable over Desai in view of Ashley (U.S. Patent No. 6,176,857). Applicant submits that the shortfalls of Desai are not met by Ashley. Ashley discloses tips and shafts; there is no disclosure or teaching of structures beyond the tips and the shafts. That is, there is no suggestion one of ordinary skill in the art could have derived from Ashley for providing an elongated ablation electrode

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extending the length of an elongated probe body or such an elongated ablation electrode to have a proximal end that is received in a handle housing, as set forth in claims 2 and 6 hereinabove.

Claims 5, 8-11, 13 and 19-23 depend from claim 2 or 6, and therefore they incorporate all the limitations of claims 2 or 6. Because claims 2 and 6, as amended, are in condition for allowance over Desai, and Desai in combination with Ashley, Applicant submits these dependent claims are also in condition for allowance. Accordingly, Applicant respectfully requests the rejections under section 103(a) be withdrawn.

In view of the above amendments and remarks, Applicant respectfully submits that all of pending claims 2, 4-11, 13-16, 18-23, 48, 49, 51, 52, and 54-63 are in condition for allowance, and a timely indication of allowance is therefore respectfully requested. If there are any remaining issues that can be addressed by telephone, Applicant invites the Examiner to contact the undersigned at the number indicated below if there are any questions.

Respectfully submitted,
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